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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION – LOS ANGELES

GIGANEWS, INC., a Texas corporation;
LIVEWIRE SERVICES, INC., a Nevada
corporation,

Plaintiffs,

v.

PERFECT 10, INC., a California
corporation; NORMAN ZADA, an
individual; and DOES 1-50, inclusive,

Defendants.

Case No.: 2:17-cv-05075-AB (JPR)

**STIPULATED PROTECTIVE
ORDER**

Trial Date: January 15, 2019

1 and such information shall not be disclosed to anyone except as provided herein. No
2 expert or consultant shall review or gain access to Confidential or AEO Material
3 unless he or she has executed the Notification of Protective Order and Undertaking
4 (attached as Exhibit A), and has otherwise complied with the requirements of
5 Paragraph 6, below. Receiving parties, experts, and consultants must store and
6 maintain Confidential or AEO Material at a location and in a secure manner that
7 ensures that access is limited to the persons authorized under this Order. The recipient
8 of any material designated under this Order shall use its best efforts, but at no time
9 less than reasonable efforts under the circumstances, to maintain the confidentiality
10 of such information.

11 **CONFIDENTIAL DESIGNATION OF MATERIAL**

12 3. Any information or materials produced by any party or nonparty as part
13 of discovery in this action may be designated "Confidential" by such party or
14 nonparty pursuant to Paragraph 4 of this Order.

15 4. The designation of information or material as "Confidential" for
16 purposes of this Order shall be made in the following manner by the party or nonparty
17 seeking protection:

18 (a) In the case of documents, exhibits, briefs, memoranda,
19 interrogatory responses, responses to requests for admission, or other materials (apart
20 from depositions or other pretrial or trial testimony): by affixing a plainly visible
21 confidentiality designation legend to: (i) the cover page of such document saying
22 either "Confidential" or "This Document Contains Material Designated as
23 Confidential Pursuant to the Protective Order Entered in this Case"; and (ii) each
24 page containing any confidential information or material; or (iii) physically on the
25 outside of any media for storing electronic documents, at the time such documents
26 are produced or such information is disclosed, or as soon thereafter as the party or
27 nonparty seeking protection becomes aware of the confidential nature of the
28 information or material disclosed and sought to be protected hereunder.

1 (b) In the case of depositions or other pretrial or trial testimony: (i)
2 by a statement on the record, by counsel, during such deposition or other pretrial or
3 trial proceeding that the entire transcript or a portion thereof shall be designated
4 hereunder; or (ii) by written notice of such designation sent by counsel to all parties
5 within ten (10) days after the delivery to counsel of the transcript of the deposition.
6 At or before a deposition, the deponent or his counsel, or any other counsel of record,
7 acting in good faith, may invoke the provisions of this Order in a timely manner,
8 giving adequate warning to counsel for the party or nonparty that testimony about to
9 be given is deemed protected under this Order. The parties may modify this procedure
10 for any particular deposition or proceeding through agreement on the record at such
11 deposition or proceeding or otherwise by written stipulation, without approval of the
12 Court. If any document or information designated under this Order is used during
13 the course of a deposition, that portion of the deposition record reflecting such
14 confidential information shall be sealed and stamped accordingly, and access thereto
15 shall be limited pursuant to the other terms of this Order.

16 (c) A party or nonparty furnishing documents and things to another
17 party shall have the option to require that all or batches of documents and things be
18 treated as confidential during inspection and to make its designations of particular
19 documents and things at the time copies of documents and things are produced or
20 furnished.

21 5. Information or material designated as "Confidential" under this Order,
22 or copies or extracts thereof, may be disclosed, described, characterized, or otherwise
23 communicated or made available in whole or in part only to the following persons:

24 (a) Outside counsel of record in this litigation and staff and
25 supporting personnel of such attorneys, such as paralegals, secretaries, stenographic
26 and clerical employees and contractors; and outside copying, imaging and
27 presentation services (if used), who are working on this litigation under the direction
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1 of such attorneys and to whom it is necessary be disclosed for the purposes of this
2 litigation.

3 (b) In-house counsel for the parties herein who are necessary for the
4 furtherance of this litigation and in-house paralegals;

5 (c) One officer of each of parties;

6 (d) Subject to Paragraphs 6 and 8 herein, persons who are expressly
7 retained or sought to be retained by a party as consultants or testifying experts, such
8 as accountants, statisticians, economists, industry or technical experts; provided that
9 the disclosure of "Confidential" material to any persons under this subparagraph shall
10 only be to the extent necessary to perform their work on this litigation.

11 (e) Subject to Paragraph 8 herein, any other persons who are
12 designated to receive material designated "Confidential" by order of this Court after
13 notice to the parties, or by written stipulation of the parties.

14 (f) Subject to Paragraph 7 and Paragraph 8 herein, any person who
15 gives testimony in deposition or trial in this action.

16 (g) The Court and Court personnel.

17 (h) Subject to Paragraph 8, court reporters, interpreters and
18 videographers employed in connection with this action.

19 (i) The parties retain the right to apply to the Court for an order
20 restricting certain individuals from access to certain information. To accomplish this,
21 counsel of a party wishing to restrict access to information shall produce the
22 information (i.e. document) to all counsel for which there is no objection, with a
23 request that the information not be disseminated to other individuals involved in this
24 litigation pending further order of the Court. The moving party shall, thereafter,
25 within seven (7) days, file the information under seal with the Magistrate Judge and
26 identify the person (by name and title) who the moving party objects to seeing the
27 information and why the moving party believes the information should not be
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1 received by this person(s). If the Court is inclined to grant the order, it will notify
2 the aggrieved party and invite briefing and/or oral argument before issuing an order.

3 6. For the purposes of this Order, a consultant shall be restricted to a person
4 who is retained or employed as a bona fide consultant or expert for purposes of this
5 litigation, whether full or part time, by or at the direction of counsel for a party, and
6 who is not retained by, employed by, or otherwise affiliated with any party to this
7 action. The name, business address, curriculum vitae (“CV”) and affiliation of each
8 such consultant or testifying expert must be disclosed to the producing party at least
9 five (5) court days (the “Objection Period”) prior to such person’s review of material
10 designated under this Order. The CV shall contain a list of all present
11 employers/clients as well as all past employers/clients for the 36 months preceding
12 the date of employment in this case. During the Objection Period, counsel for the
13 designating party shall have the opportunity to oppose the proposed disclosure. Any
14 party opposing disclosure shall within such Objection Period provide the other party
15 with a written objection, setting forth in reasonable detail the specific grounds for
16 such opposition. If no written objection is received by 5:00 p.m., Pacific Standard
17 Time, on the fifth day following the date of disclosure of the identity of the proposed
18 consultant or testifying expert, then the party seeking to disclose may do so and
19 failure to object shall constitute waiver of the specific objection. However, after the
20 Objection Period has expired without objection, a party may still move the Magistrate
21 Judge to allow it to object to an expert if it can show: (a) there is new, material
22 information relating to the expert, which was not available to the moving party within
23 the Objection Period; and (b) had the moving party been aware of the information at
24 the time, the moving party would have objected to the expert. In the event that an
25 objection is received, the objecting party shall, within two (2) court days send to the
26 other party by email or facsimile or next business day delivery its portion of a joint
27 stipulation, modeled on the procedure used by this District, to be furnished to the
28 Court in connection with any motion regarding the objection. Within three (3) court

1 days of receipt of such portion of the joint stipulation, the party seeking to disclose
2 shall send its portion of a joint stipulation to the objecting party by email or facsimile
3 or next business day delivery. Within two (2) court days of receipt of both portions
4 of the joint stipulation, the objecting party shall file the joint stipulation with the
5 Court and both parties shall seek a hearing at the Court's earliest convenience. In the
6 event such resolution by the Court is necessary, the material at issue shall not be
7 disclosed to the consultant or testifying expert pending resolution of the issue by the
8 Court.

9 7. Each person set forth in Paragraph 5 to be examined as a witness, may
10 be so examined at trial or during a deposition concerning any information or material
11 designated under this Order, which that person had lawfully received or authored
12 prior to and apart from this action. During examination, any such witness may be
13 shown information or material designated under this Order by a party which appears
14 on its face or from other documents or testimony to have been received or authored
15 by that witness from, or communicated to that witness by, that same party provided
16 that the examining party makes a reasonable effort to obtain the compliance of the
17 witness with Paragraph 8.

18 8. Each person set forth in Paragraph 5 who is not (i) outside counsel to a
19 party to this litigation, or staff directly employed by such outside counsel; or (ii) the
20 Court or Court personnel to whom material designated under this Order is to be
21 disclosed, shall, prior to receiving such material, be furnished with a copy of this
22 Order, a copy of the Court's Notification of Protective Order and Undertaking, which
23 the person shall read and sign (Attached as Exhibit A). Counsel for the party seeking
24 to disclose material designated under this Order to any such person pursuant to this
25 paragraph shall be responsible for permanently retaining the executed originals of
26 such Notifications.

27 9. All Confidential or AEO Material shall be securely maintained in a
28 manner intended to preserve confidentiality. Access to such material shall be

1 permitted only to those designated persons set forth in Paragraph 5 above as persons
2 properly having access thereto. The recipient of any material designated under this
3 Order shall use its best efforts, but at no time less than reasonable efforts under the
4 circumstances, to maintain the confidentiality of such information.

5 10. Nothing contained in this Order shall affect the right of any party to
6 make any objection, claim any privilege, or otherwise contest any request for
7 production of documents, interrogatory, request for admission, subpoena, or question
8 at a deposition or to seek further relief or protective order from the Court as permitted
9 by the Federal Rules of Civil Procedure. Nothing in this Order shall constitute an
10 admission or waiver of any claim or defense by any party.

11 11. In the event that counsel for any party determines to file any information
12 or material designated Confidential pursuant to this Order (“Confidential
13 Information”), or any papers containing or making reference to such information (the
14 “Filing Party”), those materials shall be filed under seal pursuant to Local Rule 79-
15 5, in sealed envelopes on which shall be endorsed the caption of this action and a
16 statement substantially in the following form:

17 **“CONFIDENTIAL**

18 This envelope contains documents that are subject to an order governing
19 discovery and the use of confidential discovery material entered by the Court in this
20 action. The envelope shall not be opened or the contents thereof displayed or revealed
21 except by Order of the Court. Violation hereof may be regarded as contempt of the
22 Court.”

23 Subject to the Court’s convenience and needs, documents filed under seal shall
24 be kept under seal by the Clerk until further Order of the Court.

25 12. A party shall not be obligated to challenge the propriety of material
26 designated under this Order at the time the designation is made and failure to do so
27 shall not preclude a subsequent challenge thereto. In the event that any party to this
28 litigation disagrees at any state of these proceedings with such designation, such party

1 shall provide to the designating person or entity a letter detailing its objection to the
2 designation. The designating person or entity shall respond by letter within three (3)
3 court days to such a letter. If not resolved, the objecting party may file a motion
4 objecting to the designation. In any such motion, the burden of proving that
5 information has been properly designated under this Order is on the person or entity
6 making such designation.

7 **“HIGHLY CONFIDENTIAL—AEO” DESIGNATION OF MATERIALS**

8 13. Any party or nonparty may further designate certain material or
9 testimony of a highly confidential and/or proprietary nature as “Highly
10 Confidential—AEO,” in the manner for confidential designation set forth in
11 Paragraph 4 herein. The “Highly Confidential—AEO” designation may be
12 challenged in the manner set forth in Paragraph 12 herein. Materials designated
13 “Highly Confidential—AEO” (“AEO Material”) shall be subject to the following
14 protections, which are in addition to those protections applicable to documents
15 designated “Confidential” under this Order. AEO Material may be accessed, copied,
16 or held by only (i) all counsel of record and necessary support staff working under
17 the lawyers’ supervision; and (ii) outside consultants and experts who have signed
18 the attached Notification of Protective Order and Undertaking and who qualify for
19 access to the materials in a manner set forth in Paragraph 6 herein. Designation of
20 material as “Highly Confidential—AEO” shall be restricted only to those materials
21 for which there is a legitimate reason to restrict access. The designating party shall
22 have the burden of establishing that there is a legitimate reason for applying such a
23 designation.

24 14. Unless otherwise agreed or ordered, AEO Material shall not be
25 disclosed to any other officer, director, or employee of a party, except that, provided
26 they have signed the attached Notification of Protective Order and Undertaking,
27 Norman Zada and Giganews Vice President of Finance Jim Weinstein, shall each be
28 allowed access to AEO Material. Nothing in this provision shall prevent a

1 designating party from moving the Court for additional restrictions on access to
2 specific materials where the circumstances so warrant.

3 15. Other than for the purposes of this Action, subject to the restrictions of
4 this Order, those permitted access to Highly Confidential Material under this Order
5 shall not disclose contents of such material to any other person at any time and shall
6 never use any information gained from access to or review of such materials for any
7 purpose or reasons other than for the purposes of this action.

8 **OTHER PROVISIONS**

9 16. Nothing in this Order shall preclude any party to the lawsuit or its
10 counsel: (a) from showing a document designated under this Order to an individual
11 who either prepared or reviewed the document prior to the filing of this action; or (b)
12 from disclosing or using, in any manner or for any purpose, any information or
13 documents from the party's own files which the party itself has designated under this
14 Order.

15 17. Nothing in this Order shall prevent disclosure beyond the terms of this
16 Order if the party designating material consents in writing to such disclosure, or if a
17 court orders such disclosure. A party requested to disclose material designated under
18 this Order to a nonparty pursuant to a validly served subpoena civil investigative
19 demand, discovery procedure permitted under the Federal Rules of Civil Procedure,
20 or other formal discovery request shall object to its production to the extent permitted
21 by applicable law and notify the requesting nonparty of the existence of this Order
22 and that the material requested by the nonparty has been designated under this Order
23 and shall further give notice of such request, by email or facsimile and next business
24 day delivery, upon the party which designated the material as soon as is reasonably
25 possible, but in all instances sufficiently prior to the date on which such confidential
26 material is to be produced to the nonparty. Once such notice is given, the designating
27 party shall take all steps it believes are necessary to protect the Confidential Materials
28 and the non-designating party is not required to take any further action.

1 18. If a party inadvertently fails to designate material and/or information
2 when producing or otherwise disclosing such material and/or information, it shall not
3 be deemed a waiver in whole or in part of a party's claim of confidentiality, either as
4 to the specific information disclosed or as to any other information relating thereto
5 or on the same or related subject matter. As soon as the receiving party has knowledge
6 of the inadvertent production, the information must be treated as if it had been
7 designated under this Protective Order, and the receiving party must endeavor in
8 good faith to obtain all copies of the document which it distributed or disclosed to
9 persons not authorized to access such information by Paragraphs 5 or 14 above, as
10 well as any copies made by such persons. The costs of doing so shall be paid by the
11 designating party.

12 19. All counsel for the parties who have access to information or material
13 designated under this Order acknowledge that they are bound by this Order and
14 submit to the jurisdiction of this court for purposes of enforcing this Order.

15 20. Entering into, agreeing to, and/or producing or receiving information or
16 material designated under this Order, or otherwise complying with the terms of this
17 Order shall not:

18 (a) operate as an admission by any party that any particular
19 information or material designated under this Order contains or reflects trade secrets,
20 proprietary or commercially sensitive information or any other type of confidential
21 information;

22 (b) operate as an admission by any party that the restrictions and
23 procedures set forth herein constitute or do not constitute adequate protection for any
24 particular information designated under this Order;

25 (c) prejudice in any way the rights of any party to object to the
26 production of documents they consider not subject to discovery;

1 (d) prejudice in any way the rights of any party to object to the
2 authenticity or admissibility into evidence of any document, testimony or other
3 evidence subject to this Order;

4 (e) prejudice in any way the rights of any party to seek a
5 determination by the court whether any information or material should be subject to
6 the terms of this Order;

7 (f) prejudice in any way the rights of any party to petition the Court
8 for a further protective order relating to any purportedly confidential information; or

9 (g) prevent the parties to this Order from agreeing in writing or on
10 the record during a deposition or hearing in this action to alter or waive the provisions
11 or protections provided for herein with respect to any particular information or
12 material with written or on the record consent of the party disclosing such
13 information.

14 21. This Order shall not be construed to apply to any information that: (a) is
15 available to the public other than through a breach of this Order or other duty of
16 confidentiality; (b) a receiving party can demonstrate was already known to the party
17 at the time of disclosure and was not subject to conditions or confidentiality; or (c) a
18 receiving party can demonstrate was developed by that party independently or any
19 disclosure by a designating party or nonparty.

20 22. Within sixty (60) days after the final termination of litigation between
21 the parties (including appeals), all material designated under this Order and all copies
22 thereof (including summaries and excerpts) shall be either returned to the party that
23 produced it or destroyed and certification of destruction supplied to the producing
24 party; provided, however, that for each party, counsel who is entitled access to such
25 designated material pursuant to this Order may retain one complete and unredacted
26 set of its work product that contains designated material as well as pleadings and
27 papers filed with the Court or served on the other party solely for reference in the
28 event of, and only in the event of, further proceedings or litigation between the

1 parties, a dispute over such counsel's performance, or a dispute over the use or
2 dissemination of material designated under this Order. Such retained copy of
3 pleadings and papers shall be maintained in a file accessible only by properly
4 authorized counsel under the provisions of, and bound by, this Order. This Order
5 shall survive the final termination of this litigation with respect to any such retained
6 Confidential Material and the Court shall retain jurisdiction to resolve any dispute
7 concerning the use of information disclosed hereunder.

8 **SCOPE**

9 23. The protections conferred by this Order cover not only the materials
10 designated "Confidential" and/or "Highly Confidential—AEO" (as defined above),
11 but also (1) any information copied or extracted from such material; (2) all copies,
12 excerpts, summaries, or compilations of "Confidential" and/or "Highly
13 Confidential—AEO" material; and (3) any testimony, conversations, or presentations
14 by the parties or their counsel that might reveal "Confidential" and/or "Highly
15 Confidential—AEO" material. However, the protections conferred by this Order do
16 not cover the following information: (a) any information that is in the public domain
17 at the time of disclosure to a receiving party or becomes part of the public domain
18 after its disclosure to a receiving party as a result of publication not involving a
19 violation of this Order, including becoming part of the public record through trial or
20 otherwise; and (b) any information known to the receiving party prior to the
21 disclosure or obtained by the receiving party after the disclosure from a source who
22 obtained the information lawfully and under no obligation of confidentiality to the
23 designating party. Any use of "Confidential" and/or "Highly Confidential—AEO"
24 material at trial shall be governed by a separate agreement or order.

25 **DURATION**

26 24. Even after final disposition of this litigation, the confidentiality
27 obligations imposed by this Order shall remain in effect until a designating party
28 agrees otherwise in writing or a court order otherwise directs. Final disposition shall

1 be deemed to be the later of (1) dismissal of all claims and defenses in this action,
2 with prejudice; and (2) final judgment herein after the completion and exhaustion of
3 all appeals, rehearings, remands, trials, or reviews of this action, including the time
4 limits for filing any motions or applications for extension of time pursuant to
5 applicable law.

6 Dated: _____

7
8
9 Hon. Jean P. Rosenbluth
UNITED STATES MAGISTRATE JUDGE

EXHIBIT A: NOTICE OF PROTECTIVE ORDER AND UNDERTAKING

I, _____ [*print or type full name*], of
 _____ [*print or type full name*], declare under
 penalty of perjury that I have read in its entirety and understand the Stipulated
 Protective Order that was issued by the United States District Court for the Central
 District of California on _____ [*date*] in the case of *Giganews, Inc. v.*
Perfect 10, Inc., Case No. 2:17-cv-05075-AB (JPR). I agree to comply with and to
 be bound by all the terms of this Stipulated Protective Order and I understand and
 acknowledge that failure to so comply could expose me to sanctions and punishment
 in the nature of contempt. I solemnly promise that I will not disclose in any manner
 any information or item that is subject to this Stipulated Protective Order to any
 person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction for the United States District Court
 for the Central District of California for the purpose of enforcing the terms of this
 Stipulated Protective Order, even if such enforcement proceedings occur after
 termination of this action.

I hereby appoint _____ [*print or type full name*]
 of _____ [*print or type full address and*
telephone number] as my California agent for service of process in connection with
 this action or any proceedings related to enforcement of this Stipulated Protective
 Order.

Date: _____

City and State where sworn and signed

Printed name: _____
Print name here

Signature: _____
Sign here

1 Dated: June 25, 2018

FENWICK & WEST LLP

2
3 By: /s/Todd R. Gregorian
4 Todd R. Gregorian

5 Attorneys for Plaintiffs/Judgment Creditors,
6 GIGANEWS, INC., and LIVEWIRE SERVICES,
7 INC.

8 Dated: June 25, 2018

LAW OFFICES OF MATTHEW C. MICKELSON

9
10 By: /s/Matthew C. Mickelson
11 Matthew C. Mickelson

12 Attorneys for Defendants,
13 PERFECT 10, INC. and NORMAN ZADA
14

15
16 **ATTESTATION OF SIGNATURES**

17 I hereby attest that the concurrence in the filing of this document has been
18 obtained from the signatory indicated by a “conformed” signature (/s/) within this e-
19 filed document.

20
21 By: /s/Todd R. Gregorian
22 Todd R. Gregorian
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